

Date of Decision: 7th April, 2008

+ **CS(OS) 1517/1997**

SH. PRAMOD KUMAR JAIN Petitioner
 Through Mr.Raman Kapur with Mr.Honey
 Taneja, Advocate.

versus

M.C.D. Respondent
 Through None.

CORAM:**MR. JUSTICE S. RAVINDRA BHAT**

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| 1. Whether reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Mr. Justice S. Ravindra Bhat (Open Court)

1. The petitioner, in this suit, challenges an award made by an agreed Arbitrator on 11.7.1997.

2. The petitioner had tendered for a works contract advertised on 4.4.1990 for widening/improvement of main road of Sultanpur resettlement colony of Najafgarh Zone, the contract was valued at Rs.26,95,858/- and was awarded on 7.11.1990. In its terms, the work had to be completed on or before 15.8.1991. The petitioner alleged defaults and deficiencies on the part of the defendant/employer which delayed the performance of the said works. Apparently, a show cause notice had been issued by the defendant to the petitioner demanding why the contract should not to be

terminated. Ultimately, the contract was terminated through a letter dated 1.6.1992.

3. The contract contained a condition which stipulated that disputes and differences were to be referred to arbitration; this was in view of clause 25 of the standard terms and conditions. The petitioner-contractor invoked the arbitration clause through notice dated 12.5.1994. This has been recorded in the impugned award. As the respondent was inactive, the petitioner approached this Court under Section 20 of the Arbitration Act, 1940, and sought for an order to file the arbitration agreement. There was some doubt or dispute about the precise date when the proceeding (suit No.1792-A/1995) was filed. It was contended that the said proceeding was filed on 1.8.1995 by the respondent; the petitioner, however, contended by relying upon a certified copy of the order dated 19.11.1996, disposing of the said petition under Section 20, that it approached the Court and filed Suit No.1792-A/1995 on 21.3.1995.

4. The respondent objected to the arbitration proceedings and contended in general terms that the claims were time barred. The petitioner submitted that claims were within the time as the arbitration clause was invoked on 12.5.1994, i.e. less than three years from the date of rescission/cancellation which was 1.6.1992, even according to the defendant. The Arbitrator after noticing the

contention regarding the maintainability of Section 20, however, did not proceed to explore that issue, and stated as follows:-

".....So a petition under Section 20 of the Arbitration Act could have been filed by the claimant petitioner within three years of the said date but in the present case the petition under Section 20 itself was filed admittedly after expiry of the three years period...."

"Be as it may the question is not whether the petition under Section 20 of the Arbitration clause was within limitation or not. The question which arises for consideration before me is whether the claim set up by the petitioner is within time"

5. The Arbitrator, however, reasoned that for filing the civil suit on the basis of the cause of action accruing to the present petitioner, limitation commenced from the date the contract was rescinded and civil suit could be brought within three years of the date of accrual of such cause of action. That part of the award reads as follows:-

"For filing civil suit on the basis of the cause of action accruing to the petitioner admittedly the limitation commences from the date the contract was rescinded by the respondent and a civil suit on the basis of the said cause of action could have been brought within three years of the date of accrual of cause of action. On the same analogy, it has to be held that the claims set up by the petitioner which have been referred to the undersigned are barred by limitation as much as they have been set up after expiry of three years period from the date of the cause of action accrued to the petitioner claimant for setting up his claims."

6. The petitioner had also raised an alternative submission that in the absence of the final Bill, the cause of action could not be said to have accrued on 1.6.1992. This too, however, did not find favour with the Arbitrator who proceeded to overrule. He, however, also adjudicated the matter on merits. The Arbitrator returned findings on the merits without prejudice to the question of limitation. He allowed the petitioner's claims to the extent mentioned in the award.

7. The finding of the Arbitrator on the question of limitation has been challenged by the claimant - petitioner. The record shows that the respondent - MCD had apparently filed objections under Section 30/33 of the Act, vis-a-vis the merits, but the file reveals that those objections were returned on 28.7.1998 and not re-filed later. There are no objections on the merits of the award, allowing the petitioner's claims.

8. The Court has considered submissions on behalf of the petitioner. Learned counsel submitted that the findings of the Arbitrator so far as it relates to issue of limitation are not maintainable. He submits that the claim for arbitration was admittedly made on 12.5.1994 well within the period of limitation, i.e. three years. It was submitted, in this case, the cause of action arose on 1.6.1992 when the contract was undeniably rescinded. Without

going into the question about the respondent's failure to prepare the final Bill, the claims were thus entertainable in arbitration, since the demand was made on 12.5.1994.

9. Learned counsel contended that the Arbitrator fell into an error - which is apparent from the record itself, mixing up the concept of institution of a suit and juxtaposing it with arbitration proceedings. It was contended that the approach showed manifest error in law inasmuch as the Arbitrator was unduly influenced by the so-called delay in the institution of the Section 20 of the proceeding.

10. The above factual narrative shows that the dispute so far as it concerns the recession of the contract (which also led to the adjudication on the merits of the claims by the Arbitrator), arose on 1.6.1992 when the letter of recession was issued by MCD. Section 37 of the Arbitration Act, 1940, through Section 37(3) enacts that for the purpose of arbitration and of the Indian Limitation Act, an arbitration is deemed to be commenced when one party to the arbitration agreement serves on the other parties, a notice requiring the appointment of an arbitrator or where the arbitration agreement provided that the reference be made to a person is so named or designated in the agreement requiring that the difference be submitted to the person so named or designated. The material portion of the said provision reads as follows:-

"37. Limitations.- (1)All the provisions of the Indian Limitation Act, 1908, shall apply to arbitrations as they apply to proceedings in Court.

(2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, a cause of action shall, for the purpose of limitation, be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that terms in the agreement.

(3) For the purposes of this section and of the Indian Limitation Act, 1908, an arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other parties thereto a notice requiring the appointment of an arbitrator, or where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement requiring that the difference be submitted to the person so named or designated."

11. In this case, the original cause of action as it were, arose in the year 1992, when the contract was rescinded on 1.6.1992. The demand for Arbitration which would be squarely covered under Section 37(3) was made on 12.5.1994. In the circumstances, the Arbitrator, fell into a manifest error of law in holding that the claims were made beyond the time, as he took the terminus quo, to be the point when the reference was actually made by the Court, and was entered upon by him. That point in time was clearly not relevant, as the date of demand for arbitration, i.e. 12.5.1994 was relevant. Reckoned from such date, the claim was made within three years of

the cause of action (i.e. 1.6.1992). For this reason, the findings on the question of limitation are not sustainable.

12. The Arbitrator had after returning findings in favour of the petitioner awarded interest at the rate of 12% per annum from the commencement of the arbitration proceedings till date of realization.

13. In view of the above discussion, IA No.10392/1997 has to succeed; it is accordingly allowed. As noted in the preceding part of this judgment, the respondent – MCD had apparently filed some objections on 22.7.1998; the same were, however, returned, with some office objections, these objections have not been refiled ever. Therefore, no objections on the merits of the findings in the award exist. The same, therefore, has to be made rule of Court.

14. In the above circumstances, the petitioner is entitled to succeed. The award is hereby modified. The findings regarding the claim of the petitioner being time barred, shall stand deleted. Consequently, the award, subject to such modification, has to be made the Rule of Court. The petitioner is entitled to post award interest @ 12% per annum, till realization, on the claims allowed. Let decree be drawn in these terms.

APRIL 07, 2008
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S. RAVINDRA BHAT,J